

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WINIFRED JIAU,

No. C 13-0248 WHA (PR)

Plaintiff,

**ORDER REVOKING IN FORMA
PAUPERIS STATUS FOR APPEAL**

vs.

KAIRE POOLE; RANDY TEWS,


Defendant.

Plaintiff, a federal prisoner incarcerated at the Federal Correctional Institute in Dublin, California, filed this civil rights case in which she complains that she was wrongfully expelled from the residential drug abuse treatment program. Because she stated in her complaint that the expulsion from the program “resulted [in] the plaintiff no longer [being] eligible for a 12-month early release,” the complaint was dismissed without prejudice to refiling in a habeas case because her claims implicate the duration of her confinement and success would entitle her to reinstatement in the program and earlier release. *See Skinner v. Switzer*, 131 S. Ct. 1289, 1293 (2011). Plaintiff’s subsequent motions for reconsideration and relief from judgment were denied because she did not indicate in those motions that the expulsion from the drug treatment programs did not affect the duration of her confinement. She appealed both the judgment and the denial of her post-judgment motions. Our court of appeals has referred the case for a

determination of whether in forma pauperis status should be revoked under 28 U.S.C. 1915(a)(3) because the appeal is frivolous or taken in bad faith. The appeal is frivolous because it is clear from plaintiff's papers that her placement in the program affect the duration of her confinement such that success on her claims would entitle her to earlier release, and therefore that the claims should be brought in a habeas petition not a civil rights complaint. Accordingly, in forma pauperis status is **REVOKED**.

IT IS SO ORDERED.

Dated: April 8, 2013.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

G:\PRO-SE\WHA\CR.13\JIAU0248.IFPAPP.wpd